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Philip Morris USA Inc., Altria Client Services LLC,  
Altria Group Distribution Company, and  
Altria Enterprises LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: JUUL LABS, INC., MARKETING,  
SALES PRACTICES, AND PRODUCTS  
LIABILITY LITIGATION

This Document Relates to:

*B.B. v. JUUL Labs, Inc., et al.*

Case No.: 19-MD-02913-WHO

**ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL CERTAIN EXHIBITS TO  
THE ALTRIA DEFENDANTS' DAUBERT  
MOTION REGARDING PLAINTIFF'S  
EXPERTS**

**TO THE COURT, THE PARTIES, AND ALL COUNSEL OF RECORD:**

Pursuant to Civil Local Rules 7-11 and 79-5, Altria Group, Inc., Philip Morris USA Inc., Altria Client Services LLC, Altria Group Distribution Company, and Altria Enterprises LLC (collectively “the Altria Defendants”) hereby give notice of their Administrative Motion to File Under Seal Certain Exhibits to the December 23, 2021 *Daubert* Motion Regarding Plaintiff’s Experts. Specifically, the Altria Defendants respectfully seek to file under seal Exhibits 3, 5, 9, 11, 13, and 15.

**I. COMPLIANCE WITH STANDING ORDER AND CIVIL LOCAL RULE 79-5**

The Altria Defendants certify that they have reviewed and complied with Judge Orrick’s Standing Order on Administrative Motions to Seal, as well as Civil Local Rule 79-5.

**II. MATERIAL TO BE FILED UNDER SEAL**

The Altria Defendants request an order granting their motion to file under seal the materials described in the following table:

Document	Description	Designating Party
Exhibit 3	Excerpts from the Expert Report of Dr. Minette Drumwright	Altria Defendants
Exhibit 5	Excerpts from the Expert Report of Dr. Thomas E. Eissenberg	Altria Defendants
Exhibit 9	Excerpts from the Expert Report of Dr. Robert K. Jackler, M.D	Altria Defendants
Exhibit 11	Excerpts from the Expert Report of Dr. Anthony R. Pratkanis	Altria Defendants
Exhibit 13	Excerpts from the Expert Report of Dr. Alan Shihadeh	Altria Defendants
Exhibit 15	Excerpts from the September 20, 2021 Expert Report of Dr. Jonathan Winickoff	Altria Defendants

The documents identified in the table above contain information that was designated confidential or highly confidential by the Altria Defendants under the Stipulated Protective Order (ECF 1282). The documents contain information that is confidential or competitively sensitive. In this Motion, the Altria Defendants respectfully seek to file under seal Exhibits 3, 5, 9, 11, 13, and 15 to protect confidential or competitively sensitive information from public disclosure.

## II. BASIS FOR REQUEST TO FILE UNDER SEAL

A party seeking to seal materials must provide “compelling reasons” to do so. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The Ninth Circuit has recognized that compelling reasons to seal information exist when public disclosure of the information might harm a party’s “competitive standing.” *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)). There also may be compelling reasons to seal materials that contain proprietary information, confidential business strategy, or similar documents, the disclosure of which “would result in harm to [the designating party’s] business.” *Tryfonas v. Splunk*, No. 17-cv-01420-HSG, 2018 WL 3077762, at \*2 (N.D. Cal. 2018).

There are compelling reasons to grant the Altria Defendants’ request to redact and/or seal these documents. These documents contain confidential, competitively sensitive, and proprietary business information, including confidential business strategy, details relating to business operations, and industry analysis and intelligence. *See* Declaration of Angela R. Vicari in Support of the Altria Defendants’ *Daubert* Motion Regarding Plaintiff’s Experts. The Exhibits have thus been designated as confidential or highly confidential under the Stipulated Protective Order in order to protect this confidential, nonpublic, and competitively sensitive information.

Courts routinely seal similar confidential, competitively sensitive information. *See, e.g., In re Electronic Arts, Inc.*, 298 Fed. App’x 568, 569 (9th Cir. 2008) (finding compelling reasons to seal pricing terms, royalty rates, and guaranteed minimum payment terms); *Ehret v. Uber Techs., Inc.*, 2015 WL 12977024, at \*2 (N.D. Cal. 2015) (granting motion to seal Uber’s “sensitive, proprietary business strategy and financial information”); *Entm’t USA, Inc. v. Moorehead Commc’ns, Inc.*, 2015 WL 1279721, at \*17 (N.D. Ind. 2015) (sealing documents containing “non-public financial and business information”); *Rodman v. Safeway, Inc.*, 2013 WL 12173601, at \*2 (N.D. Cal. 2013) (sealing “valuable internal information not otherwise made available to the public regarding Safeway.com’s pricing strategies, pricing methodology, internal business strategy, and financial performance, as well as transaction and customer data”); *Transperfect Glob., Inc. v. Motionpoint Corp.*, 2013 WL 209678, at \*1 (N.D. Cal. 2013) (sealing document containing

“proprietary information about Transperfect’s business operations and technology”); *Apple, Inc. v. Samsung Electronics Co.*, 2012 WL 4933287, at \*1 (N.D. 2012) (observing that sealing is required to “prevent judicial documents from being used ‘as sources of information that might harm a litigant’s competitive standing’”) (citation omitted); *TriQuint Semiconductor, Inc. v. Avago Technologies Ltd.*, 2011 WL 6182346, at \*6 (D. Ariz. 2011) (finding compelling reasons to seal business strategy information from disclosure). The Court should do the same here.

Accordingly, the Altria Defendants respectfully submit that compelling reasons exist for sealing Exhibits 3, 5, 9, 11, 13, and 15 to the Altria Defendants’ December 23, 2021 *Daubert* Motion Regarding Plaintiff’s Experts. The Altria Defendants have complied with Civil Local Rule 79-5. Unredacted versions of these documents are attached hereto.

Pursuant to Local Rules 79-5, the Altria Defendants, as the Designating Parties, bear responsibility to establish that all of the designated material is sealable. As required by Civil Local Rule 79-5, the following attachments accompany this motion:

1. The Declaration of Angela R. Vicari in Support of the Altria Defendants’ Administrative Motion to Seal;
2. A copy of the unredacted documents to be sealed attached as Exhibit A; and
3. A Proposed Order that lists in tabular format each document sought to be sealed.

Dated: December 23, 2021

Respectfully submitted,

ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ Angela R. Vicari

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 INC., PHILIP MORRIS USA INC., ALTRIA  
 CLIENT SERVICES LLC, ALTRIA GROUP  
 DISTRIBUTION COMPANY, and ALTRIA  
 ENTERPRISES LLC

**CERTIFICATE OF SERVICE**

I, Angela R. Vicari, hereby certify that on the 23rd day of December, 2021, I electronically filed the foregoing **ADMINISTRATIVE MOTION TO FILE UNDER SEAL CERTAIN EXHIBITS TO THE ALTRIA DEFENDANTS' DAUBERT MOTION REGARDING PLAINTIFF'S EXPERTS** with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notifications to all counsel of record.

By: /s/ Angela R. Vicari  
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